tributes in equal manner and degree with the husband. Therefore on principle her right in the relationship should be as valuable to her as property, as is the husband's right to him. Before the Ohio case the law had developed no further than to allow the wife an action in the two direct offenses against the marital relation in which the interest of society in general as well as the individual interest is most strikingly present,— alienation of affections and criminal conversation.[9] It is submitted that the action should lie wherever as in the Ohio case a wrongful and intentional interference with the relationship by a third party deprives the husband or wife of the *consortium* of the other; and that this is a common-law right.[10]

Where the loss of *consortium* results solely from a negligent injury the principle is less obvious. The interest of society in protecting the sanctity of the institution is not concerned. The Indiana case accords with the little authority on this subject in denying a recovery on the ground of double damages, since the husband will recover in his action for his physical injuries.[11] In Massachusetts and Connecticut the courts are even showing a tendency to deny the right of the husband to recover for loss of *consortium* resulting from negligent injury to the wife, in view of the modern legislation allowing her to recover for her own injuries.[12] But if our conclusion that the personal interest in the marital relationship is a distinct property right is correct, it is clear that damages to the one are not compensation for the injury to the other. It is submitted that the practical difficulties with which the jury system sometimes confronts the administration of justice are not in this case sufficient to overcome the desirability of protecting the right.

PREFERRED STOCKHOLDER'S RIGHT OF PREËMPTION. — When a corporation increases its capital stock, the existing stockholders have a right in most states to subscribe for the new issue in proportion to their holdings before it can be otherwise disposed of.[1] The rule is based on the principle that each stockholder is entitled to an opportunity to preserve his proportionate share in the control of the corporation and in the capital, surplus, and other assets of the enterprise.[2] Moreover, it has a practical

[9] This branch of the law is of very recent growth. The leading case was decided in 1889. Foot *v.* Card, 58 Conn. 1, 18 Atl. 1027. But the subject was discussed in 1861. Lynch *v.* Knight, 9 H. L. C. 577.

[10] Haynes *v.* Nowlin, *supra*; Foot *v.* Card, *supra*; Bennett *v.* Bennett, *supra*.

[11] Feneff *v.* New York Central & Hudson River R. Co., *supra*; Goldman *v.* Cohen, 30 N. Y. Misc. 336, 63 N. Y. S. 459; Glenn *v.* Western Union Tel. Co., 1 Ga. App. 821.

[12] Bolger *v.* Boston Elevated Ry. Co., 205 Mass. 420, 91 N. E. 389; Feneff *v.* New York Central & Hudson River R. Co., *supra*; Marri *v.* Stamford Street R. Co., *supra*. The court says that the right of *consortium* is too vague and indefinite a right. The same argument would apply to the other cases in which an action for its loss is allowed. The fear of excessive jury verdicts is probably the underlying reason for the decisions. For a discussion of this subject see 10 COL. L. REV. 678, and 24 HARV. L. REV. 501.

[1] Gray *v.* President, etc. of Portland Bank, 3 Mass. 363; Electric Co. of America *v.* Edison Electric Illuminating Co., 200 Pa. St. 516, 50 Atl. 164. See 4 THOMPSON, CORPORATIONS, § 3642; TAYLOR, CORPORATIONS, 5 ed., § 569.

[2] See Dousman *v.* Wisconsin, etc. Co., 40 Wis. 418, 421; Jones *v.* Morrison, 31 Minn. 140, 153, 16 N. W. 854, 861.

foundation in that it protects stockholders from issues to a particular person or clique, unduly favored by the body in whom the power to increase the capital rests.[3] On the other hand the business efficiency of a corporation would be seriously hampered by confining the discretion of the controlling faction too narrowly as to the need and method of increasing its capital. The doctrine of preëmption, therefore, should be applied as a flexible principle rather than as a rigid rule. Thus it is usually held that stockholders may subscribe *pro rata* at par even though the stock sells at a premium.[4] Yet with the consent of the majority it may be offered to all subscribers *pro rata* at any fixed price less than the market value.[5] A secret sale to the highest bidder is enjoined as discriminatory;[6] but a public auction might be permissible on the theory that each stockholder is given an opportunity to maintain his proportionate interest.[7] Where the success of the entire enterprise depends upon purchasing a particular piece of property, it may be purchased by an issue of stock to the owner thereof.[8] But where new stock was needlessly offered to friends of the officers without regard to the right of preëmption, the same court granted an injunction.[9] Still further limitations are imposed on the principle by statutes [10] and by the charter or by-laws of individual corporations.[11] A similar flexibility prevails as to the remedy granted for a violation of the right. Where the stock is easily obtainable on the market, damages at law furnish substantial relief.[12] But when the stock is not on the market or the control of the corporation is involved an injunction is usually granted.[13]

A recent decision in which a preferred stockholder was denied an injunction against issuing new stock at par to common stockholders only, "but upon condition that he be allowed to subscribe for an equivalent amount of preferred stock at par," raises an important problem in the application of this principle on which there is singularly little authority. *Russell* v. *American Gas and Electric Co.*, 47 N. Y. L. J. 2047. Except for such preferences as are specifically given by the articles of association, the status of all classes of stockholders is the same, and consequently each stockholder is entitled to subscribe for his *pro rata* share of a new issue whether it be preferred or common.[14] Possibly where strong conflicting interests exist between the holders of different classes of stock as distinct entities, the court might be justified in making its refusal of an injunc-

[3] Electric Co. of America *v.* Edison Electric Illuminating Co., *supra*; Way *v.* American Grease Co., 60 N. J. Eq. 263, 47 Atl. 44.

[4] Hammond *v.* Edison, etc. Co., 131 Mich. 79, 90 N. W. 1040. *Cf.* Cunningham's Appeal, 108 Pa. St. 546. See 4 THOMPSON, CORPORATIONS, § 3643.

[5] Stokes *v.* Continental, etc. Co., 186 N. Y. 285, 78 N. E. 1090.

[6] Electric Co. of America *v.* Edison Electric Illuminating Co., *supra.*

[7] See Stokes *v.* Continental, etc. Co., 186 N. Y. 285, 298, 78 N. E. 1090, 1094.

[8] Meredith *v.* New Jersey, etc. Co., 55 N. J. Eq. 211, 37 Atl. 539.

[9] Way *v.* American Grease Co., *supra.*

[10] Ohio Ins. Co. *v.* Nunnemacher, 15 Ind. 294.

[11] Aspinwall *v.* Butler, 133 U. S. 595, 10 Sup. Ct. 417.

[12] Gray *v.* President, etc. of Portland Bank, *supra*; Stokes *v.* Continental, etc. Co, *supra.*

[13] To compel a shareholder to part with a fraction of his interest for damages would amount to private eminent domain. Dousman *v.* Wisconsin, etc. Co., *supra*; Hammond *v.* Edison, etc. Co., *supra.*

[14] Jones *v.* Concord, etc. R. Co., 67 N. H. 119, 38 Atl. 120. See 4 THOMPSON, CORPORATIONS, § 3647.

tion conditional upon a ratable issue of each kind. But where, as in the principal case, no such class differences appear, such a condition seems an unwarranted interference with the discretion of the associates.[15] Moreover, as preferred is selling below par and common at a premium, it violates the preëmption rule by discriminating in favor of common stockholders. The denial of an injunction, however, might be justified on the ground that, as common stock could be purchased in the market, damages at law furnished adequate relief to the appealing preferred stockholder.

DISTRIBUTION OF DIVIDENDS ON STOCK BETWEEN LIFE TENANT AND REMAINDERMAN. — The rights of the life tenant and remainderman where stock has been granted or bequeathed in trust for the use of one for life with remainder over to the other, have been the subject of great controversy. The tendency of the early English cases was to give all extraordinary dividends to the remainderman.[1] As finally settled by the House of Lords the English law gives all stock dividends to the remainderman and all cash dividends to the life tenant, unless the company could not legally increase its capital stock, in which case extraordinary dividends go to the remainderman.[2] The American courts may be divided roughly into three groups. Those which follow the "Massachusetts" rule, which is similar to the English rule, allot all dividends in the form of a new issue of stock to the remainderman, all cash dividends from earnings to the life tenant.[3] Under the "Pennsylvania" rule no distinction is made between stock and cash dividends. Each is apportioned between the life tenant and remainderman respectively according as it represents earnings since or before the creation of the trust fund.[4] The "New York and Kentucky" rule awards dividends, whether stock or cash representing accumulated earnings, to the life tenant.[5] A recent

[15] Ordinarily the amount and class of stock to be issued is left wholly to the discretion of the associates. Page *v.* Whittenton Mfg. Co., 97 N. E. 1006 (Mass.); Jones *v.* Concord, etc. R. Co., 67 N. H. 234, 30 Atl. 614. Consequently such a conditional decree would usually be an attempt by the court to do indirectly what it cannot do and ought not to do directly.

[1] Brander *v.* Brander, 4 Ves. 800; Paris *v.* Paris, 10 Ves. 185.

[2] Bouch *v.* Sproule, 12 App. Cas. 385; Irving *v.* Houstoun, 4 Paton App. Cas. 521.

[3] Minot *v.* Paine, 99 Mass. 101; Lyman *v.* Pratt, 183 Mass. 58, 66 N. E. 423; Boardman *v.* Mansfield, 79 Conn. 634, 66 Atl. 169; Boardman *v.* Boardman, 78 Conn. 451, 62 Atl. 339; De Koven *v.* Alsop, 205 Ill. 309, 68 N. E. 930; Millen *v.* Guerrard, 67 Ga. 284 (by statute).

[4] Earp's Appeal, 28 Pa. St. 368; Soehnlein *v.* Soehnlein, 146 Wis. 330, 131 N. W. 739; Miller *v.* Payne, 136 N. W. 811 (Wis.); Van Doren *v.* Olden, 19 N. J. Eq. 176; Holbrook *v.* Holbrook, 74 N. H. 201, 66 Atl. 124; Pritchitt *v.* Nashville Trust Co., 96 Tenn. 472, 36 S. W. 1064; Thomas *v.* Gregg, 78 Md. 545, 28 Atl. 565. See *Ex parte* Humbird, 114 Md. 627, 641, 80 Atl. 209, 214. Quinn *v.* Safe-Deposit and Trust Co., 93 Md. 285, 48 Atl. 835, seems *contra* on the question of apportionment. It is probable that this rule is applied only to extraordinary dividends, regular dividends going to the life tenant regardless of their source. See Earp's Appeal, 28 Pa. St. 368, 375; 1 MORAWETZ, PRIVATE CORPORATIONS, 2 ed., § 466. But see Lang *v.* Lang, 57 N. J. Eq. 325, 328, 41 Atl. 705, 706.

[5] McLouth *v.* Hunt, 154 N. Y. 179, 48 N. E. 548; Hite *v.* Hite, 93 Ky. 257, 20 S. W. 778; Cox *v.* Gaulbert, 147 S. W. 25 (Ky.). See Kalbach *v.* Clark, 133 Ia. 215, 110 N. W. 599. Maine adopts that feature common to both the "Massachusetts" and "New York and Kentucky" rules which disregards the time during which the earnings